

## SECTION 9-105 COPYRIGHT LAW

### **FOR HELP**

Detailed guidance may be found in 5 FAM 490 (Use of Copyrighted Material), Title 17 U.S.C. (Copyright Act of 1976), PL 105-304, 112 stat. 2860 (Digital Millennium Copyright Act of 1998), and PL 105-298, 112 stat. 2827 (Sony Bono Copyright Term Extension Act of 1998).

### **GENERAL GUIDANCE**

- All FSI faculty and staff are responsible for complying with copyright law, precedent, and guidelines when preparing training and other materials.
- Copyright is a form of protection provided by law to the authors of “original works of authorship,” published or unpublished. “Original works of authorship” include literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. The owner of the copyright has the exclusive right to:
  - Reproduce, distribute, and, in the case of certain works, publicly perform or display the work;
  - Prepare derivative works; or
  - License others to engage in the same acts under specific terms and conditions

Any change of medium, such as going from print to CD-ROM, audio or videotape to CD-ROM, requires the explicit permission of the copyright holder.

- The absence of a copyright notice does not mean that the material is not protected.
- Government agencies and personnel are not exempt from the law. Works produced by the Government are not eligible for copyright protection. Copyright protection does not extend to any fact, idea, procedure, process, slogan, principle, or discovery.
- There is no universal copyright law. Protection against the unauthorized use of materials produced in a particular country depends on the laws of that country. The United States is a signatory to two international copyright treaties: The Universal Copyright Convention and The Berne Convention for the Protection of Literary and Artistic Works.
- The Institute does not endorse any products, services, or organizations. Endorsement by name, logo, or picture of commercial products, services, organizations, or other entities in any FSI printed or electronic product is prohibited.

## **FSI COPYRIGHT COMPLIANCE POLICIES**

### **POLICY**

It is the policy of the Foreign Service Institute to respect intellectual property rights. When preparing training and other materials, instructors, course managers, administrators and staff are responsible for ensuring that every effort is made to follow copyright law, precedent and guidelines. Additional guidance is provided in 5 FAM 490.

FSI program offices are responsible for obtaining copyright permission and providing the FSI Library with a back-up copy for reference purposes of all copyright permissions they have received, whether permission was approved, denied, or conditional. Copyright permission should be requested in writing, using the sample format letters contained in Attachment 3.

### **APPLICABLE LAWS**

5 FAM 490	Use of Copyrighted Material
Title 17 U.S.C.	Copyright Act of 1976
PL 105-304, 112 stat. 2860	Digital Millennium Copyright Act of 1998
PL 105-298, 112 stat. 2827	Sony Bono Copyright Term Extension Act of 1998

### **RESPONSIBLE OFFICE/PERSONNEL**

Schools, Center, Program Managers/ Administrative Staff	Responsible for obtaining, maintaining, and ensuring that materials prepared and used in their programs comply with copyright law and FSI review and clearance procedures. Also responsible for adhering to terms as required by the copyright holder and for providing copyright clearance information to the FSI Librarian.
Program Offices	Responsible for maintaining primary record of copyright permissions they request and receive, whether approved, denied, or conditional.
Instructional Support Division (ISD) Manager	Responsible for assuring that copyright clearance procedures are followed in the development and use of FSI and other multimedia products. Also responsible for conforming to terms as required by the copyright holder.
FSI Library	Responsible for maintaining back-up copy of copyright permissions obtained by the program offices, whether approved, denied, or conditional.
Audio-Visual Facility (AVF) Manager Graphics Printing Officer	Responsible for conforming to terms as required by the copyright holder prior to printing or audiovisual production or assuming school has obtained correct copyright permission.

*(Revised 7/10/08)*

### **FSI COPYRIGHT COMMITTEE**

The FSI Copyright Committee consists of the following members:

Coreen Brown	EX (Executive Office), Chairperson
Skydance MacMahon	EX/AV
Priscilla Lujan	EX/LIB (Gregg Gibson, Alternate)
Scott Wilson	EX/ISD (Karen Audant, Alternate)
Pamela Marsh	SAIT (School of Applied Information Technology)
Louis Armijo	SAIT
Robert Nielsen	SLS (School of Language Studies)
Attila Lantos	SLS
Christina Hoffman	SLS
Alfred Carter	SLS
David Styles	LMS (School of Leadership and Management)
Sue Thompson	SPAS (School of Professional and Area Studies)
Marlene Urbina de Breen	SPAS
Kathleen Goggin	TC (Transition Center)
Archana Dheer	TC

The purpose of the Committee is to serve as an FSI-specific means through which information on copyright laws, precedents, and guidelines is disseminated and to attend and encourage attendance at an annual session given by an expert on copyright issues for FSI. Committee members serve as a point of contact for other faculty members and staff in their organizations.

### **UNITED STATES COPYRIGHT OFFICE**

The United States Copyright Office in the Library of Congress provides expert assistance to Congress on intellectual property matters. Established in 1897, the mission of the Copyright Office includes:

- Administering the copyright law
- Creating and maintaining a public record through registration of claims and recordation of documents, including those related to compulsory licenses
- Providing technical assistance to the Congress and to Executive Branch agencies including the Department of State
- Providing information services to the public by serving as a resource to the domestic and international copyright communities
- Supporting the Library of Congress by obtaining and making available deposits for the Library's collections

The Copyright Office's website contains a wealth of information on copyright basics, including laws, regulations, treaties, records and frequently asked questions. Visit the site at <http://www.loc.gov/copyright/>.

*(Revised 7/10/08)*

## **PROCEDURES**

Below are the procedures for FSI employees to follow to ensure compliance with copyright law:

1. Determine if the material to be used is subject to copyright law. The following material is **not** subject to copyright:

- U.S. government-produced material
- Material that is in the public domain (See Attachment 1)
- Any fact, idea, procedure, process, slogan, principle, or discovery

If the material is not subject to copyright law, the material may be used and no further action is required.

2. Permission from the copyright holder must be obtained to use copyrighted material. Fair use, in some cases, provides an exception if the material is used for criticism, comment, news reporting, teaching, scholarship, or research. **If there is any question regarding the applicability of fair use, copyright permission should be requested.**

The fair use exemption is based on spontaneity, brevity, and cumulative effect. See Attachment 2 for additional information on fair use. Also visit the Copyright Office website at <http://www.loc.gov/copyright/fls/fl102.pdf> and review Section 107 of the U.S. Code at <http://www.loc.gov/copyright/title17/circ92.pdf>

Please note that in some cases, advance written permission to reproduce articles from periodicals is granted. Check the copyright notice which is included in each periodical.

3. If the material to be used is subject to copyright law and does not meet the criteria for fair use, permission to use the material must be obtained from the copyright holder. **Acknowledging the source of the copyrighted material does not substitute for obtaining permission. When an item is identified for repeated use in a course curriculum, the instructor is responsible for obtaining and retaining for audit purposes the written permission of the author or publisher.**

To obtain copyright permission, FSI instructors, course managers, and staff will prepare a request to the copyright holder to obtain permission to use the material:

- a. Submit a written request (printed or electronic) to the copyright holder for permission to use the material. The request must include the specific terms and conditions of use including:

Title  
Copyright Holder  
Number of copies to be used  
Medium (printed or electronic)  
Distribution

- b. To find out how to contact the copyright holder, visit the Library of Congress Copyright Office copyright registry at <http://www.copyright.gov/records/>.

For publisher's addresses and phone numbers you can also check *Ulrich's*, a serials directory in the FSI Library.

- c. Please note that if material is to be distributed to the public through the National Technical Information Service (NTIS) or the U.S. Government Printing Office (GPO), permission must be requested and received for public distribution from the copyright holder. Copies of all permissions received must be furnished to the FSI Graphics and Printing Officer in EX/AVF when the request is made for public distribution. The Graphics and Printing Officer is the Institute's liaison with NTIS and GPO.
  - d. Sample permission letters are at Attachment 3.
4. **If you don't hear from the copyright holder, don't assume you can use the material because "no response" does not constitute permission to use.** Follow-up with the copyright holder. Keep a copy of all requests, contacts, and responses.
  5. Furnish a copy of each request, contact and response to the FSI Librarian. The FSI Library maintains a log of permissions already obtained by FSI faculty and staff. The log includes copyright holder, copyrighted material, response date, terms and schools.
  6. All materials, whether obtained by fair use or permission, must be annotated with full attribution of the source (author, source, title, date, and page numbers).
  7. Copyright fees are a legitimate expense of delivering training. Any copyright fees must be made from the school's program budget. Copyright fees of \$500 or less may be reimbursed subject to the reimbursement policies and procedures.
  8. Alternatives may be used in lieu of copying published work for a class. If permission is not received:
    - a. Place materials on reserve in the FSI Library to encourage class members to read or copy on their own.
    - b. The library staff maintains several electronic reference sources that are copyright compliant such as ProQuest Direct.

ATTACHMENT 1  
**WHEN WORKS PASS INTO THE PUBLIC DOMAIN**  
 Includes material from new Term Extension Act, PL 105-298

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years (1) (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation (2))
Published before 1923	In public domain	None
Published from 1923 – 63	When published with notice (3)	28 years + could be renewed for 47 years, now extended by 20 years for a total of 67 years. If not so renewed, now in public domain
Published from 1964 – 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term [for a total of 95 years]
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but not published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

- (1) Term of joint works is measured by life of the longest-lived author.
- (2) Works for hire, anonymous and pseudonymous works also have this term. 17 USC Section 302(c).
- (3) Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if, e.g., registration was made within five years. 17 USC Section 405.

Notes courtesy of Professor Tom Field, Franklin Pierce Law Center

LOLLY GASAWAY  
 Last updated 10-9-99

*(Revised 7/10/08)*

ATTACHMENT 2  
**FAIR USE**

Congress created the "fair use" doctrine as a flexible means to accommodate personal and educational pursuits. Instructors may provide copies of copyrighted works when they consider the four factors of fair use cited below, and determine that the use and purpose of distribution falls within those guidelines.

- The scope of fair use is limited by spontaneity, brevity, and cumulative effect.
- Copyrighted materials, whether distributed by permission or within the scope of fair use must provide appropriate descriptions of their source.
- Items identified for repeated use in a course curriculum require prior written permission.

**The Statute reads:**

**U.S. Code, Title 17, Section 107**

Notwithstanding the provisions of Section 106 and 106A the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include-

- 1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

**NOTE: If there is any question regarding the applicability of fair use, copyright permission should be requested.**

ATTACHMENT 3  
**SAMPLE PERMISSION LETTERS**  
(Use NFATC/FSI letterhead stationery)

Date

Permissions Department  
Name of Publishing Company  
Address

Dear Sir or Madam:

May I have permission to copy the following item for use in my class (give time period):

Title:

Copyright: (Copyright holder, usually the publisher)

Material to be duplicated: (Example: Chapters 1-5.)

Distribution: (Example: For distribution to 20 students in my class. Students will not be charged for photocopying.)

Reproduction: (Example: Photocopy, audio, video, digitization)

Use: (Example: Supplement instruction materials.)

Enclosed is a self-addressed envelope for your convenience. Please respond by \_\_\_\_\_ (date). Please do not hesitate to contact me if you have any questions.

Sincerely yours,

(Name of Instructor/Education Specialist)

I (we) grant permission to instructor to reproduce the above material.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Please use the following credit line:

[Source: Libraries and Copyright: A Guide to Copyright Law in the 1990's, by Laura N. Gasaway and Sarah K. Wiant. Washington, D.C. Special Libraries Association, 1994]





United States Department of State  
National Foreign Affairs Training Center  
Foreign Service Institute  
Washington D.C. 20522-4201

January 3, 2002

To: Copyright Holder  
Company  
Fax: (or Email address)  
Tel:  
RE: Request for Copyright Permission

Dear Sirs:

I am writing to you from the Foreign Service Institute, (FSI), the federal government's primary training institution for officers and support personnel of the U.S. foreign affairs community. FSI prepares American diplomats and other foreign affairs professionals to work overseas.

Our (Language) Instructors, in the School of Language Studies, are currently developing a distance learning course for government employees. We are requesting copyright permission to use your copyrighted work, entitled \_\_\_\_\_.

Please note that this course is designed to address the special professional needs of U.S. government employees and is not for commercial distribution. However, there may be distribution of *some* of our products to the public through NTIS, National Technical Information Service, a government entity. The products are sold at cost and FSI does *not* profit. We will, of course, acknowledge and give copyright credit to your publication and company.

Since we are working under a tight deadline, could you please let us know, as soon as possible, if you will grant us copyright permission. Thank you for your consideration. I look forward to hearing from you.

Sincerely,

Priscilla Trujillo  
Project Coordinator  
Post Language Program  
703.302-6868  
FAX 703.302-6738  
[Trujillopm@state.gov](mailto:Trujillopm@state.gov)



United States Department of State  
National Foreign Affairs Training Center  
Foreign Service Institute  
Washington D.C. 20522-4201

February 14, 2002

To: Mr. Armand Sliepen  
Armand.Sliepen@rnw.nl  
Radio Nederland Wereldomroep

RE: Request for Copyright Permission

Dear Sirs:

I am writing to you from the Foreign Service Institute, (FSI), the federal government's primary training institution for officers and support personnel of the U.S. foreign affairs community. FSI prepares American diplomats and other foreign affairs professionals to work overseas.

Our Dutch Instructors, in the School of Language Studies, are requesting copyright permission to record some of the news programs from the official Dutch Broadcasting Agency for use in our language courses. In addition, we would like to tape broadband video straight from the Internet etc and use it in the language lab.

Please note that these courses are designed to address the special professional needs of U.S. government employees and are not for commercial distribution. However, there may be distribution of *some* of our products to the public through NTIS, National Technical Information Service, a government entity. The products are sold at cost and FSI does *not* profit. We will, of course, acknowledge and give copyright credit to your publication and company.

Since we are working under a tight deadline, could you please let us know, as soon as possible, if you will grant us copyright permission. Thank you for your consideration. I look forward to hearing from you.

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FAX 703.302-6738  
[Trujillopm@state.gov](mailto:Trujillopm@state.gov)

(Revised 7/10/08)

(Use NFATC/FSI letterhead stationery)

October 15, 2001

To: Academon  
The Hebrew University Students' Printing and Publishing House  
Fax: 011 972 2588 2952  
Tel: 011 972 2588 2953

RE: Request for Copyright Permission

Dear Sirs:

I am writing to you from the Foreign Service Institute, the federal government's primary training institution for officers and support personnel of the U.S. foreign affairs community, preparing American diplomats and other professionals to advance U.S. foreign affairs interests overseas and in Washington.

Our Hebrew Instructors, in the School of Language Studies, are currently using your books, audio tapes/CD-ROMs for, **Hebrew from Scratch, Parts I & II, 2000**. We are requesting copyright permission to use your recorded materials in our language lab via our local server. We have purchased and continue to purchase copies of the recorded materials for our students to use outside of the language school. However, in order to use them inside our facility, we would need to format them as digitized audio files for our digital server. We need your permission in order to do this.

We would also like to request copyright permission to read and record portions of the written text (e.g., vocabulary and exercises not recorded onto the tapes/CD-ROMs which accompany your course) into an audio format for student independent study and review activities in our lab.

Please note that this course is used to address the professional needs of U.S. government employees, and not for commercial distribution.

Since we are working under a tight deadline, could you please let us know, as soon as possible, if you will grant us copyright permission. Thank you for your consideration. I look forward to hearing from you.

Sincerely,

Priscilla Trujillo  
Project Coordinator  
Post Language Program  
703.302-6868  
FAX 703.302-6738  
[Trujillopm@state.gov](mailto:Trujillopm@state.gov)

*(Revised 7/10/08)*

(Use NFATC/FSI letterhead stationery)

November 16, 2001

To: Website Content Manager at Kanjistep  
Fax:  
Tel:

RE: Request for Copyright Permission

Dear Sirs:

I am writing to you from the Foreign Service Institute, the federal government's primary training institution for officers and support personnel of the U.S. foreign affairs community, preparing American diplomats and other professionals to advance U.S. foreign affairs interests overseas and in Washington.

Our Japanese Instructors, in the School of Language Studies, would like to use two sections, **Hiragana Step and Katakana Step**, from your Website: <http://www.kanjistep.com>. Specifically, we are requesting copyright permission to include these two sections in a distance learning course for our students learning Japanese. Our distance learning course would be distributed on a CD-ROM. Therefore, in order to use these sections, we would need the HTML and resource files.

Please note that this course is designed to address the special professional needs of U.S. government employees, and not for commercial distribution. We would, of course, acknowledge and give credit to your site and company.

Since we are working under a tight deadline, could you please let us know, as soon as possible, if you will grant us copyright permission. Thank you for your consideration. I look forward to hearing from you.

Sincerely,

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*(Revised 7/10/08)*